

EXAMINER'S AMENDMENT

1. This action corrects a typographical error in the previous Examiner's Amendment. The correction was authorized by Richard Konneker. Where the amendment read claim 24 previously, it should now read claim 25. See Below.

2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Julie Nikols on 7/18/2008.

The application has been amended as follows:

Claim 25, line 4: anchoring the distal portion of the catheter device in the nucleus after it has been positioned to maintain the distal portion in the disc nucleus so that the catheter device will remain in the nucleus upon movement of the patient;

Claim 31, line 4: anchoring the distal portion of the catheter device in the nucleus after it has been positioned to maintain the distal portion in the disc nucleus so that the catheter device will remain in the nucleus upon movement of the patient;

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Claim 33, line 4: anchoring the distal portion of the catheter device in the nucleus after it has been positioned to maintain the distal portion in the disc nucleus so that the catheter device will remain in the nucleus upon movement of the patient;

3. The following is an examiner's statement of reasons for allowance: The subject matter of the independent claims could not be found and was not suggested by the prior art of record. The subject matter not found is a method of treating an intervertebral disc comprising the step of positioning the distal portion of a catheter in the disc nucleus and anchoring the distal portion in the disc nucleus so that it will remain there upon movement of the patient, and then allowing the patient to move, in combination with the features of the invention substantially as claimed.

4. The prior art teaches methods for treating the intervertebral disc, however there is no teaching or suggestion to anchor the catheter in the disc nucleus so that it will remain there upon movement of the patient.

Election/Restrictions

Claims 26-28, 34, 37, 38, 43, 44, 48, 50, 51, 56-58, 61 have been rejoined as they depend from allowable claims. Because all claims previously withdrawn from consideration under 37 CFR 1.142 have been rejoined, **the restriction requirement as set forth in the Office action mailed on 8/16/06 is hereby withdrawn.** In view of the withdrawal of the restriction requirement as to the rejoined inventions, applicant(s) are advised that if any claim presented in a

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continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Once the restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled “Comments on Statement of Reasons for Allowance.”

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LAURA A. BOUCHELLE whose telephone number is (571)272-2125. The examiner can normally be reached on Monday-Friday 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Nicholas Lucchesi can be reached on 517-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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/Nicholas D Lucchesi/
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